

Special Civil Application No 5889 of 95

Date of decision: 06/02/96

For Approval and Signature:

The Honourable Mr. Justice M.R. Calla

1. Whether Reporters of Local Papers may be allowed to see the judgment ? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

METHODEX SYSTEM LIMITED vs . ASHOK NATVERLAL
PARIKH & ANR.

Appearance:

M/S TRIVEDI & GUPTA for Petitioners
MR DG CHAUHAN for Respondent No. 1

Coram : MR. JUSTICE M.R. CALLA
06.02.1996.

ORAL JUDGEMENT

Rule. Mr. D.G. Chauhan waives service of the Rule.
On the request of both the parties this matter is taken up today for final hearing.

The respondent workman was working as executive salesman with the petitioner company. He has worked for a period from 9.5.1983 to 7.5.1992. On 7.5.1992 he resigned from the company. The respondent workman then filed Recovery Application No. 175 of 1992 claiming certain amount for his working over time and certain other dues. Whereas the application was allowed by the order dated 4.5.1994 passed by the 4th Labour Court, Ahmedabad directing the payment of Rs.1,08,361/-, the petitioner company preferred application for setting aside this award dated 4.5.1994 being Miscellaneous Civil Application No. 135 of 1994 before the 4th Labour Court,

Ahmedabad.

Mr.Thakar on behalf of the petitioner company has argued that the Recovery Application before the Labour Court was at the stage of cross-examination of the workman. It was adjourned as witness workman himself was interested to produce certain documents and the documents were to be tendered in the cross-examination by him in support at his own cost. On the next date for which the cross-examination was differed i.e.23.3.1994, the Advocate for the petitioner company did not appear before the Labour Court and the matter was adjourned to 4.4.1994 on which date again no one appeared on behalf of the company, and therefore, the remaining cross-examination was closed. The entire evidence was also closed. The case was posted for arguments and the award was passed on 4.5.1994. The case of the petitioner is that the Advocate of the company did not appear and the petitioner company did not know anything about the further proceedings going on before the Labour Court in the recovery matter and the award dated 4.5.1995 is as good as ex-parte award. It is further argued that with regard to this very subject matter another application was filed by the respondent workman before the authority under the Payment of Wages Act and thus the petitioner company was prevented from producing the evidence in support of its case by sufficient cause and the Labour Court has further ordered while passing the order on 13.2.1995 rejecting the application for setting aside ex-parte award on the ground that the different officer had filed application for setting aside ex-parte award and the officer who had filed written statement was different officer. Mr.Thakar has submitted that it could hardly be a ground to be used for setting aside ex-parte award. The Manager who had filed the written statement has been transferred and the new Manager who stepped into the shoes had filed application for setting aside ex-parte award. Mr.Chauhan has submitted that the matter has been pending since long. Several opportunities have been granted to the petitioner company and the respondent workman had resigned from the job way back in 1992 and therefore he is facing great hardship.

In the instant case it appears that the respondent workman is facing hardship but at the same time, it is also clear that the petitioner company has not been able to lead evidence and while the proceedings were at the stage of cross examination of the worker, the matter was adjourned at the instance of the worker and thereafter there has been some negligence on the part of the petitioner company in attending to the proceedings.

However, in the interest of justice, I consider it appropriate to remand the matter. The order dated 13.2.1995 rejecting the application of the petitioner company for setting aside the award dated 4.5.1994 is hereby quashed and set aside and ex-parte award dated 4.5.1994 is also hereby quashed and set aside. The matter is remanded to the 4th Labour Court, Ahmedabad for holding trial from the stage at which it was left i.e. the cross-examination of the worker on condition that the petitioner company shall pay cost of Rs.5,000/- to the respondent on or before 26.2.1996. The petitioner company shall be allowed to produce documentary as well as oral evidence to complete the remaining part of the cross examination but at the same time the respondent-worker will be at liberty to produce any further documents, if he so desires and the proceedings will be held and complete in accordance with law. The parties shall appear before the concerned Labour Court on 4.3.1996 and no further notice shall be required to be given by the Labour Court to any of the parties. They will join proceedings on 4.3.1996 and the concerned Labour Court shall thereupon proceed with the matter as directed above and decide the controversy as expeditiously as possible preferably within six month. Rule made absolute. Interim relief stands automatically vacated.
